

## CALFRESH (CF) PROGRAM REQUEST FOR POLICY/REGULATION INTERPRETATION

**INSTRUCTIONS:** Complete items 1 - 10 on the form. Use a separate form for each policy interpretation request. If additional space is needed, please use the second page. Be sure to identify the additional discussion with the appropriate number and heading. Retain a copy of the CF 24 for your records.

- Questions from counties, including county Quality Control, must be submitted by the county CalFresh Coordinator and may be submitted directly to the CalFresh Policy analyst assigned responsibility for the county, with a copy directed to the appropriate CalFresh Policy unit manager.
- Questions from Administrative Law Judges may be submitted directly to the CalFresh Policy analyst assigned responsibility to the county where the hearing took place, with a copy of the form directed to the appropriate CalFresh Bureau unit manager.

1. RESPONSE NEEDED DUE TO: <input checked="" type="checkbox"/> Policy/Regulation Interpretation <input type="checkbox"/> QC <input type="checkbox"/> Fair Hearing <input type="checkbox"/> Other:	5. DATE OF REQUEST: 05/08/17	NEED RESPONSE BY:
2. REQUESTOR NAME:	6. COUNTY/ORGANIZATION: Santa Clara County	
3. PHONE NO.:	7. SUBJECT: CF-OI 3 years establishment	
4. REGULATION CITE(S):	8. REFERENCES: <i>(Include ACL/ACIN, court cases, etc. in references)</i> <b>NOTE: All requests must have a regulation cite(s) and/or a reference(s).</b>  MPP63-801.112, ACL 1-03-02, [7 CFR 273.18(e)(3)(iii), MPP 63-801.311(b), ACL 1-52-02, ACIN 1-03-02,	

9. QUESTION: (INCLUDE SCENARIO IF NEEDED FOR CLARITY):

IEVS reviews a case and creates an IHE CF OI from January 2011 through August 2014. The NOA sent has the date of 09/1/14. The evidence shows this is actually 4 distinct periods of OI months. There is only 1 claim established (NSDI) and the NOA has all distinct months included.(01/11- 07/11) (09/11- 07/12) (11/12- 09/13) (03/14- 08/14)  
 Since the CWD shall not take action on IHE and AE claims for which more than 3 years have elapsed...63-801.112 and per [7 CFR 273.18(e)(3)(iii), The date of the demand letter is the date that the claim is established. ACL 1-03-02. These claims were established on 09/1/14 and one month must be within the 3 year time frame. In this case the 1st claim 01/11-7/11 is not within the 3-year time frame of establishment (09/1/14) but all other distinct time periods within the claim have 1 month in that 3-year period. Since period 1/11-7/11 does not have 1 month of the OI that occurs within the 3 year limit it does not meet the requirements stated in MPP 63-801.11 "...as long as 1 month of the OI occurs within the three years of establishing the claim.

10. REQUESTOR'S PROPOSED ANSWER:

- Does each individual IHE claim (not continuous) need to be within the 3-year time frame even if there is only 1 claim created?
- Does a separate claim need to be created for each distinct IHE/ AE(non continuance) time period?
- Does each individual period of OI (not continuous) need to be addressed as a single instance when looking to establish the 3-year time period when only 1 claim is created? Please refer to manual or state regs that states this.
- For each distinct period of time (Not continuous) should a separate claim be created?

11. STATE POLICY RESPONSE (CFPB USE ONLY):

Please see the attached responses, CalFresh Policy does not answer hypothetical questions, but responded to the other questions.

### FOR CDSS USE

DATE RECEIVED: 5/8/17	DATE RESPONDED TO COUNTY/ALJ: 5/11/17 SS
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# CALFRESH (CF) PROGRAM

## REQUEST FOR POLICY/REGULATION INTERPRETATION (Continued)

1. RESPONSE NEEDED DUE TO: <input checked="" type="checkbox"/> Policy/Regulation Interpretation <input type="checkbox"/> QC <input type="checkbox"/> Fair Hearing <input type="checkbox"/> Other:	5. DATE OF REQUEST: 5/8/17	NEED RESPONSE BY: ASAP
2. REQUESTOR NAME: Victoria Callaghan	6. COUNTY/ORGANIZATION: Santa Clara County	
3. PHONE NO.: 408-817-6053	7. SUBJECT: CF-OI 3 years establishment	
4. REGULATION CITE(S):	8. REFERENCES: <i>(Include ACL/ACIN, court cases, etc. in references)</i> NOTE: All requests must have a regulation cite(s) and/or a reference(s).  MPP63-801.112, ACL 1-03-02, [7 CFR 273.18(e)(3)(iii), MPP 63-801.311(b), ACL 1-52-02, ACIN 1-03-02,	

### Section 10 Continued:

With AE errors it clearly states in ACL 02-21 that separate claims cannot be created for an instance of an OI period so Lomeli is followed. Again though it does not state in the example if these months are continuance,..”a county over issues \$1080 worth of food stamps over several months and establishes 3 separate claims of \$360 each in order to collect entire \$1080 in 3 36-month time periods.

The dilemma we are having is our IEVS department is creating OI established in 2/2017 and lumping together several distinct periods of months as far as 2011 and because they are creating 1 claim (NSDI) and 1 NOA. They believe because the last distinct period of time is within 3 years, it also allows an OI time period within that claim say 3/11-12/11 and 2/13-12/13 to be established timely. In some instances the household has changed, they have been off aid and reapplied, the income is from different employments, cycles have changed. They are using either AE or IHE for entire claim but we feel in appeals this is not correct and that each distinct OI period should have at least 1 month within the 3-year time frame.

They have referred to a PI that was requested from San Bernadino County on 10/31/14, requester Adrienne M Porter, ALJ 1 to back up their stance but it states the (63-801.111) for the AE occurrences.

In referring to MPP 63-801.311(b) it instructs the CWD to calculate the claim for the six-year period preceding but per ACL 1-52-02 it states they would be operating within the three-year time frame as required. And as mentioned in ACIN 1-03-02,”The 3 –year “establishment” time frame is to ensure that timely action is taken, and the 6-year “calculation” time frame is to allow a larger amount collected. The six year allows the county to possibly collect on a larger amount of the OI.

Calculating an OI and establishing a claim are different. Per the example in ACL 1-03-02 (last page Q#1d)

It does not state if the months are continuance or not?

Example: The County found an OI for 12/2000 and established it in 12/2002 and so they must go back to December 1996 to compute any over issuances.

### Questions:

1. If a CF OI was found for months of 1/1997-12/1997 could it then be established in 12/2002 and valid to collect or closed as it is not within the 3-year time limit of the established date? (OUR ANSWER :NO, not within 3 years)

2. Another distinct period was found for months of 3/98-6/98 could it be established in 12/2002 and valid to collect or closed as it is not within the 3-year time limit of the established date? (OUR ANSWER: NO, not within 3 years)

3. Another OI was found for 1/2001-6/2001 can this be established in 12/2002 or by at least by 6/2003? (Yes within 3 years)

4. Another OI was found for 03/2000-9/2000 can this be established 12/2002 or at least by 12/2005? (Yes within 3 years)

5. If the IEVS department lumps all the above periods of time into 1 claim and 1 NOA does it validate #1 and #2 periods of time to be within that 3 -year mark since the last 2 distinct period of time are within 3 years. (OUR ANSWER: No, we feel each distinct peirod of time must be looked at to be within the 3 -year period regardles if only 1 claim was established.)

Dear Victoria,

Thank you for your Policy Interpretation request about the CalFresh over-issuance 3-year establishment issue. In the ACL 02-21 in regards to Lomeli V. Saenz says that, "only one claim may be established for an overissuance resulting from a single administrative error." MPP 63-801.311(b) states, "The CWD shall calculate the amount of the overissuance which occurred during the six years preceding the date the overissuance was discovered."

In the ACIN I-03-02 they had a question similar to this, which said, "QUESTION #1d:

What is an example of calculating back six years, but acting within three?

ANSWER:

An overissuance occurred in December 2000. The county must establish a claim (compute the amount of the claim and issue a demand letter) for this overissuance within three years, which would be before December 2003. When the county computes the amount of this overissuance, it must go back six years to determine the total amount of the claim. Thus, if the county discovers and calculates the amount of this overissuance in December 2002, it would include in its calculations any amount which occurred during the six years preceding the December 2002 date, which would be back to December 1996."

Using all the Policies above, CDSS would answer the follow questions in red below.

1. Does each individual IHE claim (not continuous) need to be within the 3-year time frame even if there is only 1 claim created?

No, if the IEVS notices an overissuance within 3 years, you must look back 6 years to determine the total amount of the OI. The "three years" is the timeframe for the occurrence, the computation, and to inform the household of the OI. This time frame is to ensure that timely action is taken on any OI. The "six years" timeframe applies in determining the total amount of the OI (ACIN I-03-02)

2. Does a separate claim need to be created for each distinct IHE/ AE(non continuance) time period?

No, in the Regulations under 63-801.31 includes both Inadvertent Household and Administrative Error Claims.

3. Does each individual period of OI (not continuous) need to be addressed as a single instance when looking to establish the 3-year time period when only 1 claim is created? Please refer to manual or state regs that states this.

In ACL 02-21 in regards to Lomeli V. Saenz, only 1 claim can be made within a 3 year period, each additional claim within in the 6 year window must be added to the original claim.

4. For each distinct period of time (Not continuous) should a separate claim be created?

No, once one OI claim is noticed within a 3 year period, you should look back 6 years to do a complete OI claim.